REMARKS

Claims 1-7 remain active in this application. The specification has been reviewed and editorial revisions made where seen to be appropriate. Claims 1-4, and 7 have been amended to make similar minor editorial revisions. No new matter has been introduced into the application.

The objections by the Examiner to the drawings originally submitted have been duly noted. In regard to Figure 2, element 14 (previously labeled "second circuit") should be labeled "first circuit" and element 15 (previously labeled "first circuit") should be labeled as "second circuit." Support for the revision of the drawings is found throughout the application, particularly on page 5, line 13 through page 6, line 21.

The Examiner has objected to the claims due to an incorrect usage of "controller" and the term "calling". This objection is respectfully traversed as moot in view of the amendments made above. Additionally, the change of "calling" to "call" has been carried out throughout the specification to correspond to the correct usage at page 6, line 14. Accordingly, reconsideration and withdrawal of this objection is respectfully requested.

Claims 1-7

35 U.S.C. 103(a): Toba in view of Colonna et al.

The Examiner rejects claims 1-7 under 35 U.S.C. 103(a) as being unpatentable over Toba in view of Colonna et al. The Examiner asserts that Toba discloses a folding type portable communication device (Figure 1) having two communication units (Figure 1, elements 1-2) connected to each other in a foldable manner (page 7, lines 16-19) and having a folded

position (Figure 2) and unfolded position (Figure 1). All of these elements are well known and admitted as prior art within the present application (page 1, lines 19-21). Toba also discloses an open/close detection switch, or two-level switch (Figure 1, element 5), for detecting which one of the folded (Figure 2) and unfolded (Figure 1) positions the two communication units (Figure 1, elements 1-2) exhibit (page 7, lines 20-23), and the switch providing a first level when the two communication units have the folded position (page 7, lines 26-29) and a second level when the two communication units have an unfolded position (page 7, lines 29-30; page 8, line 1). The purpose of this switch in Toba is to activate (illuminate) an LCD screen when the communication units are in an unfolded position and deactivate (darken) the LCD screen when the communication units are in the folded position in response to an "absence reception". This is a very logical goal as the LCD screen is hidden when the communication units are in a folded position thus saving battery power when the communication units are in the folded position and the LCD screen has no use.

Further, Toba's invention discloses a vibrator (Figure 3, element 15) and a sounder (Figure 3, element 16) controlled primarily by the power supply control circuit (Figure 3, element 14). These components are also well known as prior art as noted on page 1, lines 26-32 of the present application. The Examiner also notes that Toba's invention lacks the mode selector operatively coupled with the two-level switch required for the vibrator or the sounder to respond in accordance with the level provided by said switch (as they do in the present invention). Therefore, it is respectfully submitted that Toba does not even recognize the problem addressed by the invention: to provide particular convenience in controlling the use of a sound mode or a vibrate mode automatically in

response to a folded or unfolded position of the housing units.

Regarding Colonna et al., the Examiner notes that a portable communication device comprising a first housing element and a second housing element, wherein the second housing element is movingly connected to the first housing element such that the second housing element is settable to substantially three positions. A sensor coupled to the first housing element and the second housing element produces a position signal to indicate the position of the second housing element relative to the first housing element, and an activation element disposed on one of the first housing element and the second housing element produces an activation signal in response to a user input. A controller operates the portable communication device in one of a private-mode, a speakerphone mode, and a standby mode in response to the position signal and the activation signal. When the radiotelephone 100 is operating in the speakerphone mode and the user moves the second housing element 204 back to the first position (Figure 2), the radio telephone 100 will switch operation to the private-mode (col. 2, lines 41-54, col. 5, lines 66-67, and col. 6, lines 1-2).

As discussed, Colonna et al. teaches a portable communication device with three (3) settings used for selecting different modes of communication (e.g. speakerphone, private, or standby), these modes being substantially different from those used in the present invention (vibrate or sound) or the control of absence reception indicator in Toba which are activated based on a choice of just two (2) settings. Therefore, like Toba, Colonna et al. does not even recognize the problem addressed by the invention; or teach or suggest a solution, much less the solution claimed.

For example, Toba teaches a portable communication device that illuminates an LCD screen when opened. The

user opens the phone in order to see the screen. This is an active (or non-passive) relationship between the user and the phone, in which the user has control and anticipates all actions of the phone. Similarly, Colonna et al. demonstrates an active (or non-passive) relationship between the portable communication device and the user in which, the user determines and controls how to make the phone best serve the current communication needs (e.g. private, speakerphone, or standby). The user, may manipulate the phone to a fully unfolded position (Figure 2) in order to engage in a private conversation, or partially unfold the device (Figure 3) to include a group of conversational participants in speakerphone mode, or if no communication is necessary, the user can choose to keep the device closed to maintain a standby mode. In this situation, as in Toba, the user has an active need to manipulate the device to provide the result taught (e.g. LCD illumination, or public, private or standby conversation mode).

The present invention differs from both Toba and Colonna et al. in that it provides one of two desired results for the user without requiring immediate or conscious interface to achieve immediate results (passive use). In the discussion of the user-device interface to follow, "passive" indicates that the user moves or manipulates the device based on environment and the user needs in that environment without actually being interested in active interface with or control of the device. Likewise, "active" in the discussion of user-device interface indicates that the user is specifically interested in inputting information or retrieving information from the device in either a visual or audible manner (e.g. speaking or listening). The present invention is much more sensitive to issues of human factors, particularly cultural factors, than is displayed by either of the prior arts.

As discussed in the preferred embodiment of the present invention, the portable type communication device, hereafter referred to simply as "device," is in silent vibration mode when closed. The initial purpose for the folding device is to allow a larger screen and keypad while decreasing the overall size of the device for easy portability and carrying. Therefore, when the device is folded, the user is likely engaged in some activity where receiving calls is not an issue of primary attention. Therefore, if a call is received while the device is folded, the call comes in much more discretely, providing less distraction to others in a room. Using this method, the user will no longer be embarrassed by having their device sound loudly in a culturally inappropriate situation (e.g. a meeting, or a movie) when the user accidentally has forgotten to turn off their device or manually change the mode to silent. The principle behind the present invention is precisely this: that the user often forgets or is unaware of their device while performing tasks not normally oriented to receiving calls.

Conversely, when the user is not concerned with portability and is not carrying the device on their person, such as at home, in the workplace, or charging the device in either of these or other locations, the user can perform the single simple function of unfolding the device in a natural manner which will then automatically change the outcome of an incoming call to result in an audible alert, and after the device is unfolded by the user, the passive relationship between the user and the device is resumed both of which are responsive to the natural condition of use by the user.

In summary, the invention provides alternate ways of getting the user's attention relative to different activities where the device is more likely to be either folded (e.g. in a pocket) or unfolded (e.g. working at

a desk or table). In short, the invention is much more sensitive to issues of human factors, particularly cultural factors, whereas such consideration was not displayed by either of the prior art references.

Toba and Colonna et al. do not investigate the services that the device can provide to the user in a passive situation, and were focused only on the intentional non-passive interface with (e.g. actual control by) the user with the device. Therefore, the present invention is clearly not obvious to one skilled in the art, as those skilled in the art are generally concerned only with the factors affecting non-passive interaction with the device. Furthermore, it is respectfully submitted that Toba and Colonna et al. are not properly combined since both teach only one function (albeit different in each reference) controlled by the switch detecting a folded or unfolded state. Thus, modification of either reference in accordance with the other would preclude operation as intended. Therefore the combination is improper under In re Gordon, 221 USPQ 1125 (Fed. Circ., 1984) and even if properly combined, do not answer the recitation of the claims as to the control of a sounder and/or vibrator in accordance with folded or unfolded state or provide evidence of a level of ordinary skill in the art which would support a conclusion of obviousness of the claimed subject matter taken as a whole.

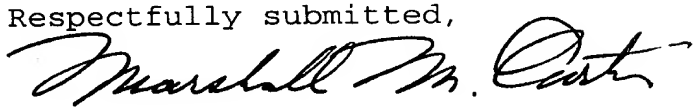
Therefore, it is respectfully submitted that the ground of rejection is clearly in error as the combination of Toba in view of Colonna et al. is not proper grounds of rejection under U.S.C. 103(a) and rejections of claims 1-7 made by the Examiner are respectfully traversed.

Since all rejections, objections and requirements contained in the outstanding official action have been fully answered and shown to be in error and/or inapplicable to the present claims, it is respectfully

submitted that reconsideration is now in order under the provisions of 37 C.F.R. §1.111(b) and such reconsideration is respectfully requested. Upon reconsideration, it is also respectfully submitted that this application is in condition for allowance and such action is therefore respectfully requested.

If an extension of time is required for this response to be considered as being timely filed, a conditional petition is hereby made for such extension of time. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Respectfully submitted,



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